

REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow. Claims 1-4 and 6-20 remain pending in this application and are submitted for reconsideration.

Applicants would like to thank the Examiner for the careful consideration given to the claims.

Restriction

Claims 17 and 19-20 were asserted by the PTO to be directed to an invention that is independent or distinct from the invention originally claimed. In particular, the PTO asserts that claims 1-4, 6-16 and 18 and claims 17 and 19-20 are related as combination and subcombination in which the combination as claimed does not require the particulars of the subcombination as claimed for patentability because “the combination of a stack of different metal fiber fleeces and method of sintering each of these fiber fleeces prior to sintering of the composite layer structure provides a distinct structure and/or method.” (Page 2 of the Office Action.) It is respectfully submitted that this restriction is improper.

Claim 17 depends from claim 1, and thus claim 17 requires all the particulars of claim 1. Claims 19-20 depend from claim 13, and thus claims 19-20 require all the particulars of claim 13. Indeed, it is not possible for a dependent claim (such as claims 17 and 19-20) to not have all the particulars of the independent claim (such as claims 1 and 13) from which they depend. Thus, the restriction between the independent claims 1 and 13 from their respective dependent claims 17 and 19-20 is improper for at least the reason that the dependent claims require the particulars of the independent claims from which they depend. The assertion that the dependent claims provide a distinct structure and/or method from the independent claims does not negate the fact that the dependent claims still require the particulars of their respective independent claims.

For at least this reason, reconsideration of the withdrawal of claims 17 and 19-20 from consideration is respectfully requested.

Rejection of claims 1-4, 7-16, and 18 based on Vanhoutte

Claims 1-4, 7-16, and 18 are rejected under 35 U.S.C. 103(a) as obvious over WO 02/083267 (“Vanhoutte”). For at least the following reasons, this rejection is traversed.

First, the statute 35 U.S.C. 103(c) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In this case, the application and Vanhoutte were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s), i.e., N.V. Bekaert S.A.

It is also respectfully submitted that Vanhoutte only qualifies, at best, as prior art under 102(e). Vanhoutte has a U.S. filing date corresponding to the March 28, 2002 international filing date of the PCT and a publication date of October 24, 2002. The current application claims priority to European application 02079793.2 (EP '793), filed on October 17, 2002, which is before the October 24, 2002 publication date and after the March 28, 2002 filing date of Vanhoutte. However, Vanhoutte is not prior art under 102(b) because the October 24, 2002 publication date of Vanhoutte is not more than one year before the U.S. filing date of the present application (October 6, 2003). Also, Vanhoutte is not prior art under 102(a) because the October 17, 2002 filing date of EP '793 is before the October 24, 2002 publication date of Vanhoutte. In order to perfect the claim of foreign priority under 35 U.S.C. 119(a)-(d), a claim of foreign priority has been made (see the Declaration, filed on April 15, 2005) and a certified copy of the priority document has been filed (which was posted on the PTO's Patent Application Information Retrieval System on April 14, 2005). No English language translation is necessary to perfect the claim of foreign priority because the EP '793 is in English. Because Vanhoutte is not considered prior art under 102(a) or 102(b), Vanhoutte can only be, at best, considered prior art under 102(e).

Because Vanhoutte is, at best, prior art under 102(e) and the subject matter of Vanhoutte and the claimed invention were, at the time the claimed invention was made, owned by the same entity, N.V. Bekaert S.A., any 103(a) rejection using Vanhoutte is improper, as provided under 103(c). Because the 103(a) rejection using Vanhoutte is improper, claims 1-4, 7-16, and 18 are allowable over the prior art.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Rejection of claims 6 and 9-10 based on Vanhoutte and Morimoto

Claims 6 and 9-10 are rejected under 35 U.S.C. 103(a) as obvious over Vanhoutte and Morimoto. Vanhoutte is, at best, prior art under 102(e) and the subject matter of Vanhoutte and the claimed invention were, at the time the claimed invention was made, owned by the same entity, N.V. Bekaert S.A. Thus, any 103(a) rejection using Vanhoutte is improper, as provided under 103(c). Because the 103(a) rejection using Vanhoutte is improper, claims 6 and 9-10 are allowable over the prior art. For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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